

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1012 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KUVARBEN W/O KANJIBHAI

KARABHAI RATHOD (CHHARA)

Versus

STATE OF GUJARAT

Appearance:

MR THAKKAR LD ADVOCATE FOR MS SUMAN PAHWA for Petitioner

MR DP JOSHI LD AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. Thakkar for Advocate Ms. Suman Pahwa on behalf of the petitioner and learned AGP Mr. D.P. Joshi for the respondents

2. The detention order dtd. 2/2/99 passed by the respondent NO. 2 - Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Sec.3(1) of Gujarat Prevention of Anti-social

Activities Act, 1985 (PASA for short), is challenged in the present proceedings under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner under Sec. 9(1) of the PASA, copy of which is produced at Annexure-B interalia indicate that four Prohibition Cases are registered against the petitioner at Nashabandhi Police Station, North Zone, Ahmedabad on 29/4/98, 8/5/98, 23/6/98 and 1/2/99. Furthermore, two witnesses on assurance of anonymity have supplied information against the petitioner in respect to the alleged incident of 5/1/99 and 3/1/99. That on the basis of the said material, respondent NO. 2 has come to the conclusion that the petitioner is a bootlegger within the meaning of Sec. 2(b) of PASA. That enforcement of general provisions of law has not been sufficient to prevent the petitioner from continuing his anti-social activity which adversely affect the maintenance of public order and as such the detention order is necessary and hence the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds.

It is contended that on the date of passing of impugned order the petitioner was in judicial custody. That though the petitioner was released on bail in earlier cases, the detaining authority has failed to consider to claim opposing to the grant of bail or claiming cancellation of bail available under Sec. 437(5) of Cr.P.C. which has vitiated the subjective satisfaction rendering the impugned order bad in law.

5. That in the matter of Jubeedabibi Vs. State of Gujarat, reported vide 95(2) GLR page 1134, the Division Bench of this Court has expressed the view to the effect that non-consideration of less drastic remedy like cancellation of bail available under Sec. 437(5) of Cr.P.C. amounts to non-application of mind vitiating subjective satisfaction of the detaining authority and rendering the detention order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal NO. 1056/99 decided by this Court on 15/9/99 (Coram C.K. Thakkar and A.L. Dave, JJ).

6. On scrutiny of ground of detention, it appears that in penultimate paragraph, the respondent No. 2 has observed that the petitioner is in judicial custody with respect to C.R. No. 56/99, however, at any time the petitioner would move bail application and after getting

released on bail, the petitioner would continue her bootlegging activity and whereby the detention order is necessary. That the said observation suggests that the detaining authority has passed the impugned order on the basis of apprehension and not on the material. That non-consideration of less drastic remedy having vitiated the impugned order and hence, the petition is required to be allowed.

7. As the petition succeeds on the above said ground alone, it is not necessary to consider other contentions raised at bar.

8. On the basis of the aforesaid observation, the petition is allowed. The detention order dtd. 2/2/99 passed by the respondent No.2 - Commissioner of Police, Ahmedabad, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Smt. Kuvarben W/o. Kanjibhai Kalabhai Rathod (Chhara) is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent is made absolute.

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